Amir Gamliel, Bar No. 268121
AGamliel@perkinscoie.com
Marlena Moore, Bar No. 301544
MMoore@perkinscoie.com
PERKINS COIE LLP
1888 Century Park East, Suite 1700
Los Angeles, CA 90067
Telephone: 310.788.9900
Facsimile: 310.788-3399

Attorneys for Plaintiff
American Industries, Inc., an Oregon corporation,

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AMERICAN INDUSTRIES, INC.,

Plaintiff,

v.

FOG CUTTER CAPITAL GROUP, INC., a Maryland corporation; FOG CAP DEVELOPMENT, LLC, an Oregon limited liability company, FOG CAP ACCEPTANCE INC., a Delaware corporation; and ANDREW A. WIEDERHORN, a California resident,

Defendants.

Case No. : 2:15-cv-07420 GHK

NOTICE OF MOTION AND MOTION FOR ASSIGNMENT ORDER AND ORDER RESTRAINING JUDGMENT DEBTORS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date: January 11, 2016
Time: 9:30 a.m.
Place: Courtroom 650

TO JUDGMENT DEBTORS FOG CUTTER CAPITAL GROUP, INC., A MARYLAND CORPORATION, FOG CAP DEVELOPMENT, LLC, AN OREGON LIMITED LIABILITY COMPANY, FOG CAP ACCEPTANCE INC., A DELAWARE CORPORATION, AND ANDREW A. WIEDERHORN, A CALIFORNIA RESIDENT (EACH, A "JUDGMENT DEBTOR"; COLLECTIVELY, "JUDGMENT DEBTORS") AND TO ANY ATTORNEY(S) OF RECORD FOR THE JUDGMENT DEBTORS:

NOTICE IS HEREBY GIVEN that on January 11, 2016, at 9:30 a.m. in Courtroom 650 of the United States District Court, located at 255 East Temple Street, Los Angeles, California, judgment creditor American Industries, Inc. ("Judgment Creditor") will and hereby does move the Court for an order instructing each Judgment Debtor to assign to Judgment Creditor his or its interests in proceeds, receivables, royalties, franchise fees or other monetary payment due or to become due from non-judgment debtor Fatburger Holdings Inc., a Delaware corporation ("Fatburger"), or any of its subsidiaries, to the extent necessary to pay Judgment Creditor's judgment in full, including accrued interest through the date of payment. Judgment Debtor Fog Cutter Capital Group is believed to own a controlling interest in Fatburger, which in turn operates or franchises a number of hamburger restaurants throughout the United States and abroad.

Judgment Creditor will and hereby does also move the Court for an order restraining each Judgment Debtor and any servant, agent, employee or attorney for Judgment Debtor and any person(s) in active concert and participating with Judgment debtor from encumbering, assigning, disposing or spending all proceeds, receivables, royalties, franchise fees or other monetary payment received or to be received from Fatburger or any of its subsidiaries.

This motion is made on the grounds that Judgment Creditor has a judgment against Judgment Debtors, the balance due on which, including accrued interest to the date of this notice, is at least $1,081,496.60, and that each Judgment Debtor may have an assignable right to the payments described herein, and there is a need to restrain each Judgment Debtor from disposing or otherwise diverting such payments.

This motion is based on this notice of motion and motion, the attached declaration of Amir Gamliel, the memorandum of points and authorities set forth below, and the complete files and records of this action.

DATED: December 10, 2015

PERKINS COIE LLP

By: /s/ Amir Gamliel
Amir Gamliel, Bar No. 268121
AGamliel@perkinscoie.com

Attorneys for Plaintiff
American Industries, Inc., an Oregon corporation

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Judgment Creditor American Industries, Inc., an Oregon corporation ("Judgment Creditor") respectfully requests that the Court issue an order assigning to it any right or interest held by judgment debtors Fog Cutter Capital Group, Inc., a Maryland corporation, Fog Cap Development, LLC, an Oregon limited liability company, Fog Cap Acceptance Inc., a Delaware corporation, and Andrew A. Wiederhorn, a California resident (each, a "Judgment Debtor;" collectively, "Judgment Debtors") in management fees, proceeds, receivables, royalties, franchise fees or other monetary payment due or to become due from non-judgment debtor Fatburger Holdings Inc., a Delaware corporation ("Fatburger"), or any of its subsidiaries, to the extent necessary to pay Judgment Creditor's judgment in full, including accrued interest through the date of payment. Judgment Debtor Fog Cutter Capital Group is believed to own a controlling interest in Fatburger, which in turn operates or franchises a number of hamburger restaurants throughout the United States and abroad. Judgment Creditor further requests that the Court enter an order restraining the Judgment Debtors from assigning or otherwise disposing of their rights or interests in such payment. Relief is requested pursuant to Code of Civil Procedure sections 708.510 and 708.520.

On July 7, 2015, this Court entered a judgment against Judgment Debtors in the amount of $1,065,303.00, plus interest and costs. On September 25, 2015, the Court issued a Writ of Execution authorizing Judgment Creditor to enforce the judgment against Judgment Debtors. Following issuance of the Writ of Execution, Judgment Creditor procured roughly $10,778.77 from Judgment Debtor Mr. Wiederhorn's bank account. No further amounts have been collected by Judgment Creditor on account of its judgment, despite its extensive enforcement efforts—which include recording an abstract of judgment in Multnomah County, Oregon—and despite the fact that Judgment Debtor Fog Cutter Capital Group, Inc. holds an ownership interest in Fatburger Holdings, Inc., which in turn owns a number of successful hamburger chain restaurants all over the United States.

Accordingly, an assignment order directing to Judgment Creditor any proceeds due or to become due to Judgment Debtors from Fatburger (or its subsidiaries) is appropriate and necessary at this time.

II. ARGUMENT

A. The Court may order Judgment Debtors to assign any right to payment to Judgment Creditor.

Code of Civil Procedure Section 708.510 authorizes a Court to issue an order directing the judgment debtor to assign to a judgment creditor (or to a receiver) all or part of a right to payment due or to become due, including, but not limited to, wages due from the federal government that are not subject to withholding under an earnings withholding order, rents, commissions, royalties, payments due from a patent or copyright, insurance policy loan value, accounts receivable, general intangibles, judgments and instruments. Although the Court may take into consideration all relevant factors, the sole constraints placed on the Court are that the right to payment be assigned only to the extent necessary to satisfy the creditor's money judgment and that, where part of the payments are exempt, the amount of the payments assigned should not exceed the difference between the gross amount of the payments and the exempt amount. Code of Civil Procedure § 708.510(c), (d), (e) and (f).

Here, Judgment Creditor only seeks any assignment order in an amount necessary to satisfy its unpaid money judgment, which, including accrued interest to the date of this motion, is at least $1,081,496.60. Since the judgment was entered less than 10 years ago, and since no order exists staying enforcement of the judgment, this Court is authorized to issue an assignment order for Judgment Creditor. Judgment Creditor is not aware of any right by Judgment Debtors to assert an exemption as to proceeds due or to become due from Fatburger.

B. The court can restrain Judgment Debtors from assigning, disposing or otherwise diverting their right to payment from Fatburger.

Code of Civil Procedure Section 708.520 authorizes the Court to restrain Judgment Debtors from assigning or otherwise disposing of the right to payment sought to be assigned upon a showing of need. Such a showing of need is set forth in the declaration that accompanies this memorandum. Consequently, Judgment Debtors must be restrained so that the right to payment sought to be assigned will be available to be applied to Judgment Creditor's judgment.

III. CONCLUSION

For the foregoing reasons, Judgment Creditor respectfully requests that the Court order an assignment of the right to payment due or to become due to Judgment Debtors by Fatburger or any of its subsidiaries in the amount of the money judgment, which balance is at least $1,081,496.60 as of the date of this motion, plus accruing interest of $145.93 per diem through the date of payment. In addition, the Court should enjoin Judgment Debtors from assigning or otherwise disposing of their right to such payment from Fatburger.

DATED: December 10, 2015

PERKINS COIE LLP

By: /s/ Amir Gamliel
Amir Gamliel, Bar No. 268121
AGamliel@perkinscoie.com

Attorneys for Plaintiff
American Industries, Inc., an Oregon corporation